

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-3, 7-12, 19, 20, and 22-27 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 19, 20, 23, 25 and 27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 19 recites a computer-readable medium, which is not explicitly defined by the claim or the specification. The broadest reasonable interpretation of such a medium would include signals that are computer-readable. Regarding a computer program product as a signal, see MPEP 2106 which states:

For example, a claim reciting only a musical composition, literary work, compilation of data, >signal,< or legal document (e.g., an insurance policy) per se does not appear to be a process, machine, manufacture, or composition of matter. See, e.g., *In re Nuijten*, Docket no. 2006-1371 (Fed. Cir. Sept. 20, 2007)(slip. op. at 18)(“A transitory, propagating signal like Nuijten’s is not a process, machine, manufacture, or composition of matter.” ... Thus, such a signal cannot be patentable subject matter.”).

If applicant would like to only claim statutory embodiments of the invention, it is suggested that applicant state that the medium of the claim is “non-transitory” in order to exclude signal embodiments.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-3, 7-12, 19, 20, and 22-27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

6. Applicant has amended the independent claims to recite automatically merging auras of design elements in a first region to produce a first affinity region, and also merging auras of design elements in a second region to produce a second affinity region. This is step "f" in claims 1, 7, and 19. According to the amended claim, the merging of auras happens directly after shapes associated with different characteristics have been automatically moved into different regions based on their different characteristics (step "e").

Both of these steps have support in the specification at p. 6-7, section 25 as well as figs. 4 and 5. However, this portion of applicant's disclosure describes claimed steps "e" and "f" as *separate embodiments*. Fig. 4 and lines 1-9 of the section describe the first embodiment (claim 1, step f) where like auras in close proximity are merged. Fig. 5 and lines 10-16 of the section describe the second embodiment (claim 1, step e) where design elements are grouped (moved) into a defined affinity region. These two embodiments were originally claimed separately in, for instance, original claims 4 and 5. There is no disclosure of using these embodiments together in the specification, and in

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fact, the combination of embodiments does not make sense in light of the disclosure.

Performing the second embodiment (moving the elements into a region) before the first embodiment (merging auras into an affinity region) would not make sense because, in the second embodiment shown in fig. 5, the affinity regions are *already defined* and the auras can no longer be distinguished. There is no need for merging auras if the elements are already grouped into regions where the whole region already has characteristics (e.g. the diagonal lines on the left side of fig. 5) that were shown in the auras.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON M. RICHER whose telephone number is (571)272-7790. The examiner can normally be reached on weekdays from 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kee Tung can be reached on (571) 272-7794. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Aaron M Richer/
Primary Examiner, Art Unit 2628
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